

RECENT CASES

VALIDITY OF COMMODITY EXCHANGE REGULATIONS UNDER THE SHERMAN ACT

Prior to May 8, 1946, grain prices were subject to price ceilings established by the Office of Price Administration and the Secretary of Agriculture.¹ On that date the OPA, the Office of Economic Stabilization, and the Secretary of Agriculture jointly directed an increase in the maximum prices² per bushel of certain grains, effective on May 13, and coincident with the order the three governmental agencies recommended to the governing boards of grain exchanges throughout the nation that all futures contracts³ be settled at the previously applicable ceiling prices. Four days later the Board of Directors of the Chicago

¹ Emergency Price Control Act of 1942, 56 Stat. 23 (1942), 50 U.S.C.A. App. § 901 (1947).

² The ceiling price of corn was raised 25 cents, wheat 15 cents, rye 10 cents, barley 9 cents, and oats 5 cents.

³ Futures contracts are agreements to buy and receive or to sell and deliver grain during the delivery month at a presently stipulated price, subject to the rules of the contract market. Futures are to be distinguished from "cash" grain transactions, which consist in the buying and selling of grain by sample at the pits of the exchange for immediate delivery. The unit of futures trading is 5,000 bushels; terms of all contracts are identical; all trades must be made at the pits of the exchange; delivery is made during the delivery month after notice of intent to deliver has been served. Actually, less than 1 per cent of the futures contracts culminate in delivery, since they are "offset" by transactions which the sellers or buyers subsequently enter into on the exchange. All contracts must be "cleared" each day through the Clearing Corporation, which by Rule 314 of the Board becomes substituted as a seller to the buyer and as a buyer to the seller upon all futures contracts. A clearing member who has open "long" commitments—one who has purchased more grain than he has sold as represented by futures—is thus a buyer from the Clearing Corporation, and conversely one who is "short" is a seller. At the close of each day a clearing member is either net "long," net "short," or "even" with the Clearing House, and he must settle his transactions on the basis of the daily price fluctuations. If he has a net "long" position and the market advances, he gains, and he is entitled to payment from the Clearing House; if he has a net "short" position and the market advances, he sustains a loss and he becomes a debtor to the corporation. As defined by the Commodity Exchange Act hedging consists in the "sale of any commodity for future delivery . . . to the extent that such sales are offset in quantity by the ownership or purchase of the same cash commodity, or conversely purchases of any commodity for future delivery . . . to the extent that such purchases are offset by sales of the same cash commodity." For example, one who, like the plaintiff, has contracted to sell unacquired cash grain three months hence goes "long" or buys futures in an equal amount so that if the price of cash grain increases before he obtains it, his loss on the cash grain contract theoretically will be offset by his gain in the futures market, which fluctuates in relation to the "cash" grain market. The relationship between the "cash" and "futures" market is of course central to all hedging and speculating operations. For an informative account of the mechanics involved in futures trading and the nature of hedging see United States Dept. of Agriculture, Circular 151, Hedging in Grain Futures 1-32 (1931); cf. *Rice v. Board of Trade*, 331 U.S. 247 (1947); *Board of Trade v. Olsen*, 262 U.S. 1 (1923); *Board of Trade v. Christie Grain & Stock Co.*, 198 U.S. 236 (1904); United States Dept. of Agriculture, Technical Bulletin 747, Grain Prices and the Futures Market (1941); Baer and Woodruff, *Commodity Exchanges* (1929).

Board of Trade promulgated Regulation 1894, which recited the request of the government as the basis for halting trading in outstanding futures contracts calling for delivery of grain in May, July, September, and December 1946, except for purposes of liquidation at the old ceiling prices. Between May 13 and May 31, 1946 the directors requested the three federal agencies to issue a directive which would replace the May 8 recommendation with a retroactive order that the grain exchanges carry out the governmental policy which had been expressed by the Board in Regulation 1894. But the agencies found that they had no power to issue such an edict,⁴ and the request was refused. In Regulation 1898, adopted on May 31, 1946, the Board of Directors, announcing that they had reconsidered their previous decision of May 12, repealed that part of Regulation 1894 which had directed settlement of the May, July, September, and December futures at the old ceiling prices. The Board provided further that trading in old futures outstanding as of June 1, 1946 might be resumed at prices no higher than the ceilings which had become effective with the price boost of May 13. Subsequently, on June 13, the Board issued Regulation 1899, which asserted that governmental purchases for European famine relief would so deplete grain supplies for domestic trade as to prevent the performance of futures contracts, thereby enabling purchasers of futures to compel "liquidation at exorbitant and extortionate prices," and that as a result "an emergency existed which would render impossible the continuance on this exchange of a free, open, and orderly market where normal competitive elements can and may operate." The Board accordingly directed that trading in July, September, and December futures be stopped, and that such contracts be settled without delivery on the basis of the closing prices quoted on the exchange as of June 13. With the expiration of OPA on June 30 the imposition of ceiling prices on grain was terminated, and the price of "cash grain" soared.⁵

⁴ The Emergency Price Control Act expressly denied to the administrator of that act the power to prohibit futures trading on contract markets. 56 Stat. 23 (1942), 50 U.S.C.A. App. § 902(e) (1947). The Commodity Exchange Act, 42 Stat. 998 (1936), 7 U.S.C.A. § 1 et seq. (1939), vests no power in the Secretary of Agriculture to terminate futures or to fix the price of defaulted contracts.

⁵ Futures prices prevailing on the Chicago Board of Trade before and after OPA prices were increased on May 13, 1946, and prices offered after the expiration of OPA ceilings on grain on June 30, 1946, are shown in the following table. Regulation 1894 ordered prices settled at

Contract	May 11 Price (Per Bu.)	June 13 Price (Per Bu.)	Highest Price for Correspond- ing Cash Grain during Period after OPA Ceil- ings Lifted	Differential be- tween June 13 Price and High- est Price Sub- sequently At- tained by Cash Grain before End of Period
July Corn.....	\$1.21½	\$1.46½	\$2.29	\$.82½
September Corn.....	1.21½	1.46½	2.29	.82½
December Oats.....	.83	.88	1.05	.17
September Wheat.....	1.83½	1.08½	2.18	.19
July Barley.....	1.26½	1.35½	1.79	.43½
September Barley.....	1.26½	1.35½	1.79	.43½
December Barley.....	1.26½	1.35½	1.89½	.54
September Rye.....	1.44½	1.58½	2.41½	.83

Had Regulation 1899 not been adopted, the value of futures contracts which were terminated would have substantially increased.⁶ Treble-damage suits were subsequently filed by holders of futures who were "long" against the directors of the Chicago Board of Trade and the directors of its affiliate, the Board of Trade Clearing Corporation, charging that Regulations 1894 and 1899 constituted a conspiracy to fix prices and to restrain trade unreasonably in violation of the Sherman Anti-Trust Act.⁷ The defendants averred that at the time of the regulations there was in effect an "emergency rule"⁸ of the Board of Trade, incorporated by reference in all futures contracts, which granted the Board "power . . . to stop trading . . . in any future contracts . . . by reason of any emergency, and to make such regulations in regard to deliveries and settlement prices as it [the Board] might deem proper." The district court dismissed the complaints for failing to state a cause of action under the Sherman Act, and the judgments were affirmed by the Seventh Circuit Court of Appeals, which ruled that the two regulations terminated contracts pursuant to a lawful power of the Board and fixed a measure of damages for liquidated agreements. Certiorari was denied by the United States Supreme Court. *Cargill, Incorporated v. Board of Trade of the City of Chicago*.⁹

Commodity exchange markets are not governmental agencies,¹⁰ and although regulated by the Commodity Exchange Act,¹¹ they have been granted no congressional exemptions from the anti-trust laws.¹² Furthermore, there is substantial, although indirect, evidence to indicate that the Congress which adopted the Sherman Act intended that it should apply to futures contracts.¹³

prices listed in the May 11 column; Regulation 1898 reopened trading at the prices listed in the June 13 column; and the last two columns indicate the extent to which the plaintiff's contracts would have increased in value after expiration of OPA.

⁶ The Federal Trade Commission has estimated that the total increase in value of the 23 million bushels of grain which were closed out by Regulation 1899 on June 13 would have totaled \$7,569,292. See FTC, Report on Economic Effects of Grain Exchange Action Affecting Futures Trading During First Six Months of 1946, at 49 (1947).

⁷ 26 Stat. 209 (1890), 15 U.S.C.A. §§ 1-7 (1941).

⁸ Rule 251, Rules and Regulations of Board of Trade of the City of Chicago.

⁹ 164 F. 2d 820 (C.C.A. 7th, 1947), cert. den. 68 S. Ct. 912 (1948). Companion cases arising from the same factual context and similarly decided were *Belz v. Board of Trade of the City of Chicago*, 164 F. 2d 824 (C.C.A. 7th, 1947), cert. den. 68 S. Ct. 913 (1948); *Daniel v. Board of Trade of the City of Chicago*, 164 F. 2d 815 (C.C.A. 7th, 1947).

¹⁰ See *Rice v. Board of Trade*, 331 U.S. 247 (1947).

¹¹ 42 Stat. 998 (1936), 7 U.S.C.A. § 1 et seq. (1939).

¹² No industry is exempt from the provisions of the Anti-Trust Act unless Congress has expressly indicated that the Act is inapplicable. See *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439, 456 (1945); *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533, 553 (1944); *United States v. Borden Co.*, 308 U.S. 188, 201 (1939).

¹³ When the Sherman bill was under debate in the Senate, Sen. Ingalls of Kansas proposed an amendment which would have taxed out of existence the business of dealing in futures contracts. Grain futures were specifically enumerated in the amendment which was adopted by

But regulations and conduct by exchange markets, which, if viewed in another context might be deemed repugnant to the Sherman Act,¹⁴ have been upheld by the Supreme Court. In *Board of Trade v. United States*¹⁵ the Court declared valid the "call rule" which prohibited members of the Chicago Board of Trade from purchasing grain "to arrive" in the hours between the closing of the exchange one day and its opening the next day at any price other than the closing bid. By contrast, conduct based on the articles in the trade association agreements of sugar refiners¹⁶ and hardwood manufacturers¹⁷ not to deviate from announced prices has been condemned as contrary to the anti-trust statutes.

If anything is definite about contemporary monopoly law, it is the proposition that agreements to fix prices are illegal per se.¹⁸ The "rule of reason"¹⁹ has no application to combinations operating directly on prices, even though the members of the price-fixing group may be in no position to control the market.²⁰ In a very real sense the premature termination of the July, September, and December futures, coupled with the directive that they be liquidated at the existing ceilings, constituted price fixing. Pegging the price of futures would prevent the free interplay of the conflicting interests of sellers and buyers which causes the

the Senate without a record vote. 21 Cong. Rec. 2613 (1890). The Sherman bill was subsequently redrafted by the Senate Judiciary Committee, which used substantially the same broad and sweeping language which Sections 1 and 2 of that Act contain today. Sen. Ingalls and proponents of the Ingalls amendment supported the redrafted bill. 21 Cong. Rec. 3145, 3153 (1890). Compare *United States v. Patten*, 226 U.S. 525 (1913) (conspiracy to run a corner in futures on the New York Cotton Exchange violates the Sherman Act).

¹⁴ The regulations and by-laws of an exchange when considered as a whole do not contravene the anti-trust statutes. *United States v. New York Coffee & Sugar Exchange*, 263 U.S. 611 (1924). State courts have also viewed individual regulations of commodity exchanges sympathetically: *State v. Duluth Board of Trade*, 107 Minn. 506, 121 N.W. 395 (1909) (regulation providing for uniform rate of commission to be charged non-members does not violate Minnesota anti-trust statutes); *Heim v. New York Stock Exchange*, 63 N.Y. Misc. 504, 118 N.Y. Supp. 591 (1909), aff'd 138 App. Div. 96, 122 N.Y. Supp. 872 (1910) (resolution expelling members who transact business with a rival exchange does not violate New York anti-trust act). But cf. *Pirnie Simmons & Co. v. Whitney*, 144 N.Y. Misc. 812, 259 N.Y. Supp. 193 (1932) (regulation prohibiting members from dealing with non-members who did not comply with exchange rule regarding sale of stock by portfolios is an illegal restraint of trade).

¹⁵ 246 U.S. 231 (1918).

¹⁶ *Sugar Institute, Inc. v. United States*, 297 U.S. 553, 601 (1936).

¹⁷ *American Column and Lumber Co. v. United States*, 257 U.S. 377 (1921).

¹⁸ *United States v. Socony-Vacuum Oil Co., Inc.*, 310 U.S. 150 (1940); *United States v. Trenton Potteries Co.*, 273 U.S. 392 (1927); *Live Poultry Dealers' Protective Ass'n v. United States*, 4 F. 2d 840 (C.C.A. 2d, 1924); see *United States v. Paramount Pictures, Inc.*, 68 S. Ct. 915, 922 (1948); *Ethyl Gasoline Corp. v. United States*, 309 U.S. 436 (1940); *Wholesale Dry Goods Institute, Inc. v. FTC*, 139 F. 2d 230 (C.C.A. 2d, 1943); *United States v. National Wholesale Druggists' Ass'n*, 61 F. Supp. 590 (N.J., 1945). Some of the most troubling recent price-fixing questions have been raised in the patent cases. See 13 Univ. Chi. L. Rev. 504 (1946), noting *United States v. Line Material Co.*, 64 F. Supp. 970 (Wis., 1946), and cases cited therein.

¹⁹ *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911); *United States v. American Tobacco Co.*, 221 U.S. 106 (1911).

²⁰ *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 224-25 (1940).

value of the contracts to vary from minute to minute and day to day. It was impossible on May 12 and June 13 to assess accurately the value of the futures contracts which would not mature until July, September, and December. And the fact that the stabilized price was the OPA ceiling would be immaterial if there were price fixing, since the vice is not the formula by which prices are set but the existence of an agreement to set prices.²¹

However, the Circuit Court, while recognizing the illegality of a price-fixing combination, held that the regulations could not be regarded as price tampering, but should be viewed as instructions to terminate, coupled with a proviso fixing the measure of damages.²² In terms of this analysis the sellers would have been relieved of their obligations to deliver by the doctrines of impossibility and frustration.²³ Since this was a civil suit for damages pursuant to the Clayton Act,²⁴ and not a proceeding initiated by the government, the plaintiff had the burden of establishing damages proximately resulting from the defendants' allegedly unlawful acts.²⁵ The plaintiff argued that the impact of Regulations 1894 and 1899 was felt most sharply by grain merchants and processors like himself, who bought futures to hedge against forward commitments for grain or processed products.²⁶ The action of the Board nullified the expected price protection of their hedges, leaving them still obligated to buy cash grain at increased prices to meet their commitments but without the opportunity to "remove" their hedges as and when they acquired cash grain. But if the Board of Trade had simply halted trading and forbidden delivery without establishing the settlement price,²⁷ the plaintiff would have been deprived of the price insurance provided by his hedges. In this situation, if the sellers had defaulted when the contracts matured, the measure of damages would have been the value of the contracts as of the date of termination, which by law could not have been in excess of the ceiling price.²⁸ But the ceiling price coincided with the settlement

²¹ *Ibid.*, at 222.

²² *Cargill, Inc. v. Board of Trade*, 164 F. 2d 820, 823 (C.C.A. 7th, 1947), cert. den. 68 S. Ct. 912 (1948).

²³ The defense of the sellers, if the stop order were a lawful regulation, would be similar to that presented where performance is rendered impossible by a change of law or an administrative regulation. See Williston, *Contracts* §§ 1938-39 (rev. ed., 1936); Rest., *Contracts* §§ 457-58 (1932). On the rights of parties where performance is prevented by war conditions, see 137 A.L.R. 1199 (1942).

²⁴ 38 Stat. 731 (1914), 15 U.S.C.A. § 15 (1941).

²⁵ See *Keogh v. Chicago & Northwestern Ry. Co.*, 260 U.S. 156 (1922); *Beegle v. Thomson*, 138 F. 2d 875 (C.C.A. 7th, 1943).

²⁶ See FTC, *Report on Economic Effects of Grain Exchange Actions Affecting Futures Trading During the First Six Months of 1946*, at 50 (1947).

²⁷ This was the course of action taken by the Minneapolis Chamber of Commerce, which left the settlement terms to the arms-length negotiations of the buyers and sellers. See FTC, *op. cit.* supra note 26, at 63-70.

²⁸ The entire problem of damages is rendered unusually complex by the existence of price ceilings and speculation, set in a context of anticipatory breach and impossibility. The inability

figure actually stipulated by the Board, so that the plaintiff's financial position would be identical whether it was affected by the hypothetical regulation without the price-fixing element or by the regulation which the Board in fact issued. The thrust of this line of argument is that it was not the settlement provision in the regulation—the alleged price fixing—so much as the stop-trading element coupled with the expiration of OPA and the subsequent price spurt which caused damage to Cargill.

Since any damages which occurred were the direct result of the stop-trading order itself, the plaintiff was thus reduced to contending that the regulation was an unreasonable restraint of trade. Perhaps the most potent factor which militates against the success of an action based on this premise is that the "emergency rule" was drafted largely in compliance with a congressional mandate. The Commodity Exchange Act requires as a condition precedent to recognition as a contract market that the governing board of an exchange provide for "the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board."²⁹ It is difficult to see how corners and manipulation can be prevented by the governing boards if they are powerless to close or restrict the sale of futures.³⁰ In addition, the general sympathy of the courts to open market trading rules and the general circumstances under which the Regulations were framed would attenuate the possibility of success of an action based on unreasonable restraint.

It is clear, of course, that uncurbed exercise of the emergency power by the governing boards could speedily demoralize the grain market and seriously damage the public interest.³¹ The values of a futures market in terms of lower prices to consumers and the diffusion in the concentration of ownership in the grain industry, made possible because of the reduction of risk through hedging operations, are widely recognized.³² If grain futures were subject to the whim and caprice of the management of contract markets, the utility of futures would be

of the sellers (shorts) to mitigate damages after the stop-trading order would also be a relevant consideration. While the normal measure of damages for anticipatory breach is the value of the contract as of the date of performance, an exception has been recognized in the case of futures contracts where the market value of the futures as of the date of the breach may serve as the damage index. See *Samuels v. E. F. Drew & Co.*, 286 Fed. 278 (D.C. N.Y., 1922); *Williston, Contracts* § 1397 (rev. ed., 1936); *Sedgwick, Damages* § 636-e (9th ed., 1909).

²⁹ 42 Stat. 998 (1936), 7 U.S.C.A. § 1 et seq. (1939).

³⁰ See *Crowley v. Commodity Exchange*, 141 F. 2d 182, 185 (C.C.A. 2d, 1944); *Cargill, Inc. v. Board of Trade of the City of Chicago*, CEA Docket No. 6 (Aug. 14, 1940). Plaintiff conceded that there might be some circumstances under which "emergency rule" 251 could properly be applied. Reply brief at 4.

³¹ The FTC censured the Chicago Board of Trade for its "vacillating policy" in May and June 1946, which the FTC said resulted "in severe loss of public confidence." FTC, Report on Economic Effects of Grain Exchange Actions Affecting Futures Trading During the First Six Months of 1946, at 8 (1947).

³² See *Baer & Woodruff, Commodity Exchanges*, 215 (1929); Report of the Federal Trade Commission on *The Grain Trade: Effects of Future Trading*, Vol. VII, at 270 (1926).

largely destroyed, and gambling and speculation would supersede legitimate trading.

The determination of whether or not an emergency exists is a matter reserved to the discretion of the Board, though a stop-trading regulation passed without the existence of a crisis would render the directors subject to the charge of ultra-vires conduct. In the present case the evidence to support the Board's conclusion is extremely persuasive.

At the time of enactment of the Regulations the government was engaged in wide-scale activity to combat famine in Europe. War Food Orders 144 and 145³³ compelled the sale to the Commodity Credit Corporation each week of all grain in the possession of grain merchandisers or grain elevator operators which had not been sold to priority purchasers. The government offered a bonus of 30 cents a bushel above the applicable ceiling price to induce farmers and warehousemen to sell corn and wheat to the Commodity Credit Corporation to be exported for famine relief.³⁴ The use of flour was drastically limited,³⁵ and gray bread appeared on bakery counters. Despite the force of these factors in reply to the restraint of trade argument, it is well established that if the court had regarded the Regulations as price fixing, neither the economic necessity of a ruinous market,³⁶ good faith,³⁷ nor alleged benefits to the industry and the public would have afforded a defense.

This case is a vagary in the law, arising from a curious combination of governmental price fixing, its removal, and the limited powers of governmental agencies. Here, as in the *Socony-Vacuum* case³⁸ which the plaintiff cited as its leading authority, the alleged unlawful conduct was carried out with the approval of federal officials. But the court in the *Socony-Vacuum* case rejected the defendants' contention that such acquiescence or support will provide immunity from an anti-trust charge.³⁹ Aside from the latter issue, *Cargill v. Board of Trade* is unique as the first case in which it has been urged that stop-trading regulations constitute a violation of the Sherman Act. The courts have previously rejected charges that such regulations are contrary to the constitutional protection against the impairment of the obligation of contracts,⁴⁰ or that they are an unlawful interference with contractual rights.⁴¹ But the most far-reaching sig-

³³ 11 Fed. Register 1761 (1946).

³⁴ *Ibid.*, at 4542.

³⁵ *Ibid.*, at 5644.

³⁶ See *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221 (1940); Handler, *Federal Anti-Trust Laws—A Symposium*, at 91 et seq. (1931). But cf. *Appalachian Coals, Inc. v. United States*, 228 U.S. 344 (1933).

³⁷ *Paramount Famous Lasky Corp. v. United States*, 282 U.S. 30, 44 (1930).

³⁸ 310 U.S. 150 (1940).

³⁹ *Ibid.*, at 225-28.

⁴⁰ *Thomson v. Thomson*, 293 Ill. 584, 127 N.E. 882 (1920).

⁴¹ *Garcia Sugars Corp. v. New York Coffee and Sugar Exchange, Inc.*, 7 N.Y.S. 2d 532 (1938), *aff'd* without opinion sub. nom. *Rifkind v. New York Coffee & Sugar Exchange*, 258 App. Div. 871, 16 N.Y.S. 2d 1023 (1939); cf. *Crowley v. Commodity Exchange*, 141 F. 2d 182 (C.C.A. 2d, 1944).

nificance of this decision is that it tends to extend the life line of the unstated exception to the anti-trust laws which the Supreme Court appears to be evolving as it confronts the regulations of auctions or open markets such as a commodity exchange.⁴² The permissible scope of these regulations is still subject to speculation. But the drift is perceptible, and the *Cargill* case clearly indicates its direction.

ENFORCEMENT OF PRIOR SUPPORT ORDER FOLLOWING EX PARTE FOREIGN DIVORCE

In 1943 the plaintiff, Mrs. Estin, brought an action for separation in New York in which her husband entered a general appearance. Upon a finding that the plaintiff had been abandoned, the court awarded her \$180 a month as permanent alimony. Shortly thereafter the husband went to Nevada, and a year later instituted suit for divorce in which the wife was served only by publication and made no appearance. Upon entry of the Nevada decree of absolute divorce, the husband ceased making payments under the New York separation decree. In Mrs. Estin's subsequent suit for arrears, the New York Court of Appeals held that the ex parte Nevada divorce, although effective to dissolve the marriage, did not terminate the husband's duty to support his spouse.¹ On certiorari, the Supreme Court of the United States affirmed this judgment. *Estin v. Estin*.²

There was no question of the bona fides of the defendant's Nevada residence and hence no contention that the ex parte divorce did not dissolve the marital relationship.³ But many courts have held, as did the New York Court of Appeals in the instant case, that the rendition of a valid foreign⁴ decree of divorce, secured by one spouse upon constructive service, does not terminate the liability to pay alimony under a prior decree for separate maintenance.⁵ The husband here argued, despite such decisions, that the Full Faith and Credit

⁴² Board of Trade v. United States, 246 U.S. 231 (1918); United States v. New York Coffee & Sugar Exchange, Inc., 263 U.S. 611 (1924).

¹ *Estin v. Estin*, 296 N.Y. 308, 73 N.E. 2d 113 (1947), noted in 47 Col. L. Rev. 1069 (1947).

² 68 S. Ct. 1213 (1948). Justices Frankfurter and Jackson wrote dissenting opinions. See also the companion case of *Kreiger v. Kreiger*, 68 S. Ct. 1221 (1948), in which the same two justices dissented.

³ *Williams v. North Carolina*, 317 U.S. 287 (1942), 325 U.S. 226 (1945).

⁴ The term "foreign" as used herein applies to sister states.

⁵ *Estin v. Estin*, 296 N.Y. 308, 73 N.E. 2d 113 (1947); *Security Trust Co. v. Woodward* 73 F. Supp. 667 (N.Y., 1947); *Basset v. Basset*, 141 F. 2d 954 (C.C.A. 9th, 1944), cert. den. 323 U.S. 718 (1944); *Durlacher v. Durlacher*, 123 F. 2d 70 (C.C.A. 9th, 1941), cert. den. 315 U.S. 805 (1942); *Metzger v. Metzger*, 32 Ohio App. 202, 167 N.E. 690 (1929); *Miller v. Miller*, 200 Iowa 1193, 206 N.W. 262 (1925); *Simonton v. Simonton*, 40 Idaho 751, 236 Pac. 863 (1925); *Dorey v. Dorey*, 248 Mass. 359, 142 N.E. 774 (1924); 3 *Nelson, Divorce and Annulment* § 32.48 (2d ed., 1945); see *Barber v. Barber*, 21 How. (U.S.) 582 (1858); *Bennet v. Tomlinson*, 206 Iowa 1075, 221 N.W. 837 (1928).